United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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IDAHO CATTLE ASSOCIATION, *ET AL.* (ON RECONSIDERATION)

IBLA 2015-28-1 Decided June 30, 2020

Motion for reconsideration of *Idaho Cattle Association*, 190 IBLA 99 (2017), in which the Board affirmed in part and reversed in part an order of an administrative law judge dismissing for lack of standing grazing associations' appeals of grazing decisions.

Motion for reconsideration denied.

APPEARANCES: Albert P. Barker, Esq. and Paul L. Arrington, Esq., Barker Rosholt & Simpson LLP, Boise, Idaho, for appellants; Anne Corcoran Briggs, Esq., and Scott Hulbert, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

The Bureau of Land Management (BLM) moves the Board to reconsider its April 26, 2017, decision issued in *Idaho Cattle Association (ICA)*. In that decision, we affirmed in part and reversed in part an order of an administrative law judge (ALJ) dismissing for lack of standing grazing associations' appeals of grazing decisions issued by BLM's Owyhee Field Office. In relevant part, the Board held that the reconsideration regulation at 43 C.F.R. § 4.403 applies only when an appellant seeks reconsideration of a Board decision and does not apply to an ALJ deciding whether to reconsider an earlier decision. We reversed the ALJ's determination that ICA did not have standing to appeal BLM's final grazing decisions because we found that ICA had sufficiently shown that its members included individuals who were adversely affected by BLM's grazing decisions. BLM seeks reconsideration of our decision, requesting that we affirm the ALJ.

SUMMARY

BLM argues in its motion for reconsideration that the holding in *ICA* relating to the Board's reconsideration regulation is legally erroneous and must be reversed. BLM also contends that the Board incorrectly interpreted material facts by failing to defer to

INDEX CODE:
43 C.F.R. §§ 4.20, .21
43 C.F.R. § 4.400, .402, .403
43 C.F.R. § 4.413
43 C.F.R. §§ 4.420, .423
43 C.F.R. §§ 4.472, .474, .475

the ALJ's factual findings. BLM therefore asks us to grant its motion for reconsideration and vacate our decision in *ICA*. We decline to do so.

We may grant reconsideration when a movant demonstrates that "extraordinary circumstances" warrant reconsideration.[1] Extraordinary circumstances may exist when there is an error in the premise upon which the Board based its decision[2] or when there is an "[e]rror in the Board's interpretation of material facts," among other things.[3] Here, BLM asserts the premise in *ICA*—that the Board's extraordinary circumstances standard does not apply to the Hearings Division—is incorrect as a matter of law. BLM also contends the Board erred in interpreting materials facts by failing to defer to the ALJ's finding that ICA had no standing.

In this case, BLM has not shown demonstrable legal or factual error in our decision. Although BLM makes various arguments that ALJs are bound by the Board's reconsideration regulation, the plain language of our rule requires that we reject these arguments. We also reject BLM's argument that the Board misinterpreted material facts. Because the ALJ made a legal determination that ICA lacked standing, it was proper for the Board to review the record and reach its own conclusion regarding ICA's standing to appeal. We therefore conclude that BLM has presented no extraordinary circumstances that warrant reconsideration, and we deny its motion.

BACKGROUND

A. *History of The Grazing Associations' Appeals*

This appeal involves BLM grazing decisions affecting allotments administered by BLM's Owyhee Field Office in Idaho. BLM issued the decisions in January 2014, which were then appealed by ICA, Public Lands Council, Owyhee Cattlemen's Association, National Cattlemen's Beef Association, and Idaho Farm Bureau (collectively, the grazing associations). BLM filed a motion to dismiss the appeals for lack of standing. In response, the grazing associations filed an affidavit of Wyatt Prescott, ICA's executive vice

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[1] 43 C.F.R. § 4.403(b). All cites to regulations are to the current edition, unless otherwise noted.

[2] *W&T Offshore, Inc. (On Reconsideration),* 194 IBLA 24, 38 (2018).[a]

[3] 43 C.F.R. § 4.403(d)(1); *see W&T Offshore, Inc. (On Reconsideration),* 194 IBLA at 38 ("Where the movant establishes material error(s) in the factual and/or legal underpinnings of the Board's decision, the Board will, on behalf of the Secretary whose authority we exercise, reconsider and modify the decision to comport with the applicable facts and/or law.").

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a) GFS(OCS) 289(2018)

president, to establish standing for all the grazing associations. ALJ Robert G. Holt granted BLM's motion, finding that the grazing associations lacked standing because the Prescott affidavit failed to establish that any individual member of any of the associations was adversely affected by BLM's decisions.[4] The ALJ found that the affidavit did not identify the member permittees by name, link any named member to a specific permit, allotment, or BLM decision, or identify what permittee is a member of which organization.[5]

The grazing associations filed a motion asking that the ALJ reconsider his dismissal of their appeals and submitted a second Prescott affidavit. The ALJ denied reconsideration, holding that their motion was late, but also finding that the second affidavit was insufficient to establish that the grazing associations had standing to appeal BLM's decisions. He stated: "The second affidavit still does not identify which permittees are members of which of the [] organizations. It does not establish that a permittee named in an appealed decision is a member of a particular organization . . . ."[6]

The grazing associations again moved for reconsideration and submitted a third Prescott affidavit. This third affidavit identified the allotments affected by the BLM grazing decisions at issue, the permittees with grazing privileges on each allotment, and the associations to which each permittee belonged. In an order dated September 12, 2014, the ALJ concluded that the grazing associations had failed to establish that any organization possessed standing and denied the motion for reconsideration. The ALJ reached this conclusion based on discrepancies in the three affidavits, which he found "cast doubt on the reliability of the information submitted."[7] He further found that although Mr. Prescott, as the executive vice president of ICA, demonstrated "competency to identify members of the ICA," he did not "demonstrate how he is competent to make statements about the membership" of the other four associations.[8]

The grazing associations then appealed the ALJ's September 2014 order to the Board.

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[4] ALJ Order: Motion to Dismiss Cattle Associations Granted; Motion to Dismiss WWP Denied; Motion to Clarify Notice of Appeal Granted (Aug. 12, 2014).
[5] *Id.* at 7.
[6] ALJ Order: Petition for Leave to File Second Affidavit of Wyatt Prescott Denied (Aug. 20, 2014).
[7] ALJ Order: Motion to Reconsider Denied; Motion to Intervene Denied at 4 (Sept. 12, 2014) (ALJ Sept. 2014 Order).
[8] *Id.* at 3.

B. The Board's April 26, 2017, Decision, Partially Reversing the ALJ's Order

On appeal to the Board, the grazing associations argued that the ALJ erred in dismissing their appeals for lack of standing because the third Prescott affidavit "provided the ALJ with the exact information requested—a list of Permittees who are members of one or more of the Associations and an identification of which Permittees belong to each Association."[9] BLM argued that the ALJ's decision was proper because the grazing associations' motion for reconsideration did not meet the standard for reconsideration set out in 43 C.F.R. § 4.403.[10]

We reversed in part the ALJ's order because we concluded that the third Prescott affidavit demonstrated that ICA members are permittees whose grazing privileges are adversely affected by the BLM decisions on appeal to the Hearings Division. We found the discrepancies identified by the ALJ in the three affidavits did not "call into question the overall reliability of the third Prescott affidavit with respect to its identification of which permittees, on which allotments, are members of the various Associations."[11] And because we found the third affidavit sufficiently demonstrated a nexus between the harm to ICA's members and the interests ICA seeks to protect on appeal, we concluded that ICA had standing to pursue its appeal and remanded the matter to the Hearings Division.[12]

In reaching our conclusion, we rejected BLM's argument that the ALJ's decision was proper because the grazing associations' motion for reconsideration did not meet the standards set forth in the Board's reconsideration regulation at 43 C.F.R. § 4.403. That regulation provides that "[t]he Board may reconsider its decision in extraordinary circumstances."[13] This Board rule requires a party requesting reconsideration to file a motion that explains why evidence that was not before the Board at the time of the Board's decision "was not provided . . . during the course of the original appeal."[14] BLM argued that under this regulation, the grazing associations were required to explain why the evidence submitted on reconsideration— the third Prescott affidavit—was not available to them when their appeals were originally dismissed by the ALJ. BLM stated:

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[9] Statement of Reasons at 5 (filed Nov. 12, 2014).
[10] Answer of Bureau of Land Management at 9-10 (filed Jan. 20, 2015) (Answer).
[11] *Idaho Cattle Association*, 190 IBLA 99, 110 (2017).[b]
[12] *Id.* at 111.
[13] 43 C.F.R. § 4.413(b).
[14] *Id.* § 4.403(d)(4) and (e).

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b) GFS(MISC) 12(2017)

"ICA's failure to explain why it [] submitted new evidence that it could have submitted on three previous occasions justifies denial of its reconsideration request . . . ."[15] We rejected BLM's argument and held that our reconsideration regulation at 43 C.F.R. § 4.403 does not apply to proceedings before an ALJ. We explained:

> The Board's reconsideration regulation, however, applies only when an appellant seeks reconsideration of a Board decision. The regulation specifies that "[t]he Board may reconsider its decision in extraordinary circumstances." When the extraordinary circumstance cited by a party seeking reconsideration is the existence of "[e]vidence that was not before the Board at the time of the Board's decision," the movant "must explain why the evidence was not provided to the Board during the course of the original appeal." But the reconsideration regulation does not apply to an ALJ when deciding whether to reconsider an earlier ALJ decision. Rather, an ALJ's consideration of a motion for reconsideration is guided by the general motions regulation applicable to ALJs [at 43 C.F.R. § 4.474(c)], which states broadly that an ALJ "may consider and rule on all motions and petitions, including a petition for a stay of a final BLM grazing decision." This regulation provides an ALJ with discretion to consider and dispose of each motion as the ALJ deems appropriate; an appellant need not show the existence of "extraordinary circumstances." And because the Board's reconsideration regulation does not apply at the Hearings Division phase of adjudication, the Associations' failure to comply with it--by explaining why the information presented in the third Prescott affidavit was unavailable at the time they submitted to the ALJ their original appeal and first Prescott affidavit--is not necessarily dispositive.[16]

BLM timely moved the Board to reconsider our holdings.[17]

DISCUSSION

A. Standard of Review for a Motion for Reconsideration

Under 43 C.F.R. § 4.403, the Board "may" reconsider a decision "in extraordinary circumstances," which include, but are not limited to, "[e]rror in the Board's

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[15] Answer at 10.
[16] 190 IBLA at 106-07 (quoting 43 C.F.R. §§ 4.403, 4.474(c)).
[17] BLM's Motion for Reconsideration (filed June 26, 2017) (Motion for Reconsideration).

interpretation of material facts."[18] The Board may also reconsider a decision when the moving party provides information that invalidates the premise upon which the Board based its decision.[19] The party seeking reconsideration must "[s]pecifically describe the extraordinary circumstances that warrant reconsideration."[20]

B. *BLM Has Not Established Legal Error in the Board's Conclusion that the Reconsideration Regulation at 43 C.F.R. § 4.403 Does Not Apply to the Hearings Division*

BLM states that in *ICA*, the Board "announced a new rule" in holding that 43 C.F.R. § 4.403 does not apply to the Hearings Division.[21] BLM argues that the Board erred in this holding and that the extraordinary circumstances standard in section 4.403 applies to the Hearings Division based on how the regulations in 43 C.F.R. Part 4, Subparts B and E fit together, and the historic application of that standard by ALJs, and because the Hearings Division must apply the higher standard set forth in section 4.403 to motions for reconsideration to ensure finality and the orderly and fair adjudication of appeals. BLM therefore argues that the Board's decision in *ICA* was based on an "incorrect premise of law" that warrants reconsideration.[22] As explained below, we find BLM's arguments are without merit.

In support of its position, BLM argues that because section 4.403 is included in 43 C.F.R. Part 4, Subpart E, entitled "Special Rules Applicable to Public Land Hearings and Appeals," it "should be construed to apply to the Hearings Division, which is a major part of the 'Public Land Hearings and Appeals' process."[23]

In *ICA*, the Board held that 43 C.F.R. § 4.403 is an appellate rule not applicable to the Hearings Division; therefore, an ALJ is not required to find that a party has demonstrated "extraordinary circumstances" to grant a motion for reconsideration after

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[18] 43 C.F.R. § 4.403(d).
[19] *San Juan Citizens Alliance*, 193 IBLA 51, 55 (2018)[c] (citing *Western Watersheds Project (On Reconsideration)*, 188 IBLA 211, 212-13 (2016)[d]; *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA 359, 365 (2013))[e].
[20] 43 C.F.R. § 4.403(c).
[21] Motion for Reconsideration at 5; BLM's Reply to Support BLM's Motion for Reconsideration at 2 (filed July 24, 2017) (Reply).
[22] Motion for Reconsideration at 6.
[23] *Id.*

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c) GFS(MISC) 10(2018)
d) GFS(MISC) 27(2016)
e) GFS(MIN) 9(2013)

the ALJ issues a final decision in a grazing matter.[24] We based our decision on the plain language of the regulation, which specifies that "'[t]he Board may reconsider its decision in extraordinary circumstances.'"[25] The regulation includes no references to the Hearings Division or an ALJ. We specified that when considering a motion for reconsideration, an ALJ instead "is guided by the general motions regulation applicable to ALJs."[26]

BLM attempts to make this regulation apply to the Hearings Division by virtue of its inclusion in 43 C.F.R. Part 4, Subpart E. But the mere fact that section 4.403 is included in Subpart E does not mean that it applies to *both* appeals and hearings procedures. The text of the regulations clearly demarcates whether the provisions apply to both the Board and the Hearings Division. The text of certain provisions explicitly apply to all of Subpart E, such as the definitions in section 4.400, while other provisions specifically apply to either the Board or ALJs.[27] Most of the appeal regulations found at 43 C.F.R. §§ 4.400 through 4.416 by their terms apply solely to the Board and are made applicable to ALJ grazing appeals only when specifically incorporated by reference in the grazing appeal regulations.[28] Section 4.403 by its own terms applies to *"the Board,"* an appellate body specifically defined as "the Interior Board of Land Appeals in the Office of Hearings and Appeals" in Arlington, Virginia.[29] It is not incorporated by reference into the grazing appeal regulations. Since the Board's regulation is unambiguous in wording, we do not agree with BLM's argument that it nevertheless requires that ALJs apply the extraordinary circumstances standard in the Hearings Division.[30]

BLM further argues that 43 C.F.R. § 4.403 applies to the Hearings Division because it was promulgated to "improve upon and clarify the generic 'extraordinary circumstances' standard," located at 43 C.F.R. § 4.21(d), which provides that "reconsideration of a decision may be granted only in extraordinary circumstances

[24] *Idaho Cattle Association*, 190 IBLA at 106-07.
[25] *Id.* at 106 (quoting 43 C.F.R. § 4.403(b)).
[26] *Id.* (citing 43 C.F.R. § 4.474(c) ("An administrative law judge may consider and rule on all motions and petitions . . . .")).
[27] *Compare, e.g.*, 43 C.F.R. § 4.402 (specifying circumstances under which an "appeal to the Board will be subject to summary dismissal by the Board") *with* § 4.423 (providing that the "administrative law judge is authorized to issue subpoenas . . . .").
[28] *See* 43 C.F.R. § 4.472 (b) and (g) (incorporating by reference § 4.413(a) and (c)); *id.* § 4.475 (incorporating by reference § 4.413).
[29] 43 C.F.R. § 4.400 (definition of "Board").
[30] *See, e.g., U.S. v. Michael D. Scavarda*, 189 IBLA 9, 16-18 (2016)[f] (holding a regulation to be unambiguously worded and therefore rejecting BLM's argument to the contrary).

f) GFS(MIN) 25(2016)

where, in the judgment of the Director or an Appeals Board, sufficient reason appears therefor."[31] BLM asserts that because section 4.21(d) is located in Subpart B, "General rules Relating to Procedures and Practice," which applies to the Hearings Division, section 4.403 must also apply to the Hearings Division.[32] We disagree.

In support of its argument, BLM cites to the preamble of the final rulemaking in 1987 first establishing 43 C.F.R. § 4.403. But there is nothing in the preamble suggesting that the extraordinary circumstances standard applies to anything other than proceedings before the Board. The preamble explains that one of the purposes in promulgating section 4.403 was to establish a reconsideration standard for the Board since prior to the rule, reconsideration of Board decisions was governed by the predecessor to 43 C.F.R. § 4.21(d) (the predecessor was codified as § 4.21(c)). The preamble stated that the new section 4.403 was intended to address two issues in the previous regulation: it did not include a time limit for petitions for reconsideration, and it had ambiguous language with respect to the impact of a petition for reconsideration on the finality of the Board decision under review.[33] In response to comments suggesting that the Department eliminate "extraordinary circumstances" as the standard for reconsideration, the Department explained in the preamble that it would retain this standard for the Board:

> [W]e have retained this provision because the Board does not intend to enlarge the scope of its reconsideration practice to make it a routine feature of adjudication. This provision reinforces the Board's expectation that parties will make complete submissions in a timely manner during the appeal, not afterward on reconsideration. This expectation is justified because almost all those who petition for reconsideration have already had two full opportunities to present their cases to the Department: once before the initial decision maker and again before the Board.[34]

The Department's explanation is entirely focused on the purpose of the extraordinary circumstances standard at the appellate level. There is no support for BLM's argument that because section 4.403 originally "clarified" how the extraordinary circumstances standard was to be applied by the Board, that standard also must apply more broadly to

[31] Motion for Reconsideration at 6.
[32] *Id.* at 7-8.
[33] 52 Fed. Reg. 21,307 (June 5, 1987).
[34] *Id.*

the Hearings Division. (We note that the current version of 43 C.F.R. § 4.403 was promulgated in 2010. At that time, the Department added the more exacting extraordinary circumstances standard now at issue.[35])

BLM then argues that even if 43 C.F.R. § 4.403 does not apply to the Hearings Division, the more general reconsideration regulation at section 4.21(d) does because, "notwithstanding references to 'Appeals Boards' and the 'Director'" in that provision, 43 C.F.R. §§ 4.20 and 4.420 require that all of Subpart B, including section 4.21(d), applies to the Hearings Division.[36] BLM's argument, however, is contrary to the plain, unambiguous language of 43 C.F.R. § 4.21(d), which states that the more general "extraordinary circumstances" provision applies to reconsideration of "a decision of the Director or an Appeals Board"—not an ALJ in the Hearings Division. Like section 4.403, section 4.21(d) does not implicate the Hearings Division.

BLM cites to cases in which it states the Department's Appeals Boards have held that all of Subpart B applies to the Hearings Division.[37] But we find that the cases cited by BLM do not support its argument. For example, *Elkay Mining Co., Tako Mining,* and *Western Slope Gas Co.* all involved requests for reconsideration of Board decisions, rather than ALJ decisions. Thus, none of those cases held that section 4.21(d) applies to the Hearings Division. Nor do any of those Board decisions mention or address in any way 43 C.F.R. §§ 4.20 and 4.420, which refer to general rules applicable to all types of

[35] *See* 75 Fed. Reg. 64,655, 64,657 (Oct. 20, 2010) (explaining that the rule "clarif[ied] the standard for a motion for reconsideration, to specify that parties can file a response to such motion, and to list circumstances that may warrant IBLA's granting a motion in its discretion").

[36] Motion for Reconsideration at 7-9; *see* 43 C.F.R. §§ 4.20 ("[T]his subpart sets forth general rules applicable to all types of proceedings before the Hearings Division and the several Appeals Boards of the Office of Hearings and Appeals."), 4.420 ("To the extent they are not inconsistent with these special rules, the general rules of the Office of Hearings and Appeals in subpart B of this part are also applicable to hearings, procedures.").

[37] Motion for Reconsideration at 7-9 (citing *Western Watersheds Project v. BLM,* 164 IBLA 300, 303-04 (2005)[g]; *Robert Lewis v. BLM,* 144 IBLA 235, 239 (1998)[h], reconsideration granted, decision reaffirmed by *Robert Lewis v. BLM (on Reconsideration),* 144 IBLA 240A (1998); *Tako Mining (On Reconsideration),* 77 IBLA 30 (1983)[i]; *Elkay Mining Co. v. Office of Surface Mining Reclamation and Enforcement,* 2 IBSMA 19, 19-20 (1980); *Western Slope Gas Co. (On Reconsideration),* 43 IBLA 259 (1979)[j]; and *Donald Peters,* 26 IBLA 235, 241 (1976))[k].

g) GFS(MISC) 12(2005)
h) GFS(MISC) 62(1998)
i) GFS(MIN) 7(1984)
j) GFS(MISC) 92(1979)
k) GFS(MISC) 106(1976)

proceedings before the Office of Hearings and Appeals. In addition, we find that the other cases cited by BLM do not involve reconsideration or reconsideration of an ALJ's decision, or otherwise provide support for BLM's assertion that 43 C.F.R. § 4.21(d) must apply to reconsideration proceedings in the Hearings Division.[38]

BLM also urges the Board to find that the Hearings Division must apply the standard set forth in section 4.403 to motions for reconsideration because it would advance the Department's "policy interest" in ensuring finality and the "orderly and fair adjudication of appeals."[39] Because we have concluded that the unambiguous language of the regulations at 43 C.F.R. §§ 4.21(d) and 4.403 do not require ALJs to adhere to the "extraordinary circumstances" standard in adjudicating motions for reconsideration, a rule change would be necessary to achieve BLM's desired outcome.

Finally, in the alternative BLM argues that even if ALJs are not required to apply 43 C.F.R. § 4.403, ALJs should be permitted to apply the extraordinary circumstances standard when adjudicating motions for reconsideration under 43 C.F.R. § 4.474(c).[40] BLM states that ALJs "have often applied" the extraordinary circumstances standard found in 43 C.F.R. § 4.403 because "[i]t is simply inherent to the fair administration of justice and motion practice before *any* tribunal that motions for reconsideration be disfavored and reviewed with a highly discretionary and narrow standard."[41] In the underlying appeal, BLM asserts that all the parties "acknowledged" that the extraordinary circumstances standard applied,[42] and that the ALJ "implicitly" applied the standard in his decision.[43]

In presenting this argument, BLM misapprehends our decision in *ICA*, which does not foreclose an ALJ from exercising his or her discretion to consider the standard set

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[38] *See* Reply at 3 (stating that the lack of on-point cases "highlights why reconsideration is so critical").
[39] Motion for Reconsideration at 10 (quoting 43 C.F.R. § 4.474(a), which states that an ALJ has "the duty and general authority to conduct the hearing in an orderly, impartial, and judicial manner"); *see* Reply at 2-3 (stating that the Board's decision in *ICA* "will profoundly undermine the Hearings Division's efforts to bring finality to its proceedings").
[40] Motion for Reconsideration at 11 ("[T]he standard for reviewing motions for reconsideration should be highly discretionary to discourage untimely or unwarranted motions for reconsideration.").
[41] *Id.* at 9.
[42] *Id.* at 5, 9.
[43] *Id.* at 11.

forth in 43 C.F.R. § 4.403 when ruling on a motion for reconsideration under 43 C.F.R. § 4.474(c). While neither 43 C.F.R. § 4.403 nor 43 C.F.R. § 4.21(d) directly applies to the Hearings Division, and ALJs are not bound to follow rules meant for the Board, no rule or Board precedent precludes an ALJ from adopting an "extraordinary circumstances" standard for adjudicating reconsideration motions under 43 C.F.R. § 4.474. Thus, when a party seeks to obtain reconsideration of a final order, an ALJ may invoke his or her general discretionary authority to revisit a prior decision and, in doing so, may look to Board regulations for guidance and apply the extraordinary circumstances standard on a case-by-case basis.

In the underlying case, and contrary to BLM's assertion, the ALJ did not apply the extraordinary circumstances standard in 43 C.F.R. § 4.403 "implicitly" or otherwise in his September 12, 2014, decision. BLM is correct that it invoked section 4.403 in its Answer before the Hearings Division, stating that "[i]t was ICA's burden to explain in its motion and its petitions to file Prescott's second and third affidavits why the new evidence was not previously submitted to the ALJ and the parties."[44] BLM is also correct that the grazing associations cited to section 4.403 during the proceedings before the ALJ.[45] But in ruling on the grazing associations' motion for reconsideration, the ALJ did not cite to, discuss, or apply the "extraordinary circumstances" standard; instead, the ALJ reviewed the substance of the affidavits submitted by the grazing associations and found that they were "not reliable enough to establish standing."[46] The ALJ therefore declined to reconsider his August 12, 2014, order.[47] Because the ALJ did not rely on the extraordinary circumstances standard in rejecting the grazing associations' motion for reconsideration, the associations' failure to comply with that standard was not dispositive to the outcome of its case before either the Hearings Division or the Board. This is what we held in our April 26, 2017, Order, and BLM has presented no extraordinary circumstances warranting reconsideration of that decision.

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[44] *See* Answer [Filed in the Hearings Division] at 10 (Administrative Record (AR), Attachment (Att.) 13).
[45] *See* Grazing Associations' Motion to Reconsider or in the Alternative, Motion to Intervene [Filed in the Hearings Division] at 3 (AR, Att. 6); Grazing Associations' Reply in Support of Statement of Reasons [Filed in the Hearings Division] at 2 (AR, Att. 12).
[46] ALJ Sept. 2014 Order at 4; *see* Idaho Cattle Association's Response to BLM's Motion for Reconsideration at 6 (filed July 17, 2017) ("The ALJ cited no law or regulation considering the standard under which he considered the third affidavit of Wyatt Prescott.").
[47] ALJ Sept. 2014 Order at 4.

C. BLM Has Not Established That the Board Erred in the Interpretation of Material Facts

BLM's second line of argument is that the Board incorrectly framed the issue to be decided in *ICA,* which resulted in the Board's erroneous interpretation of material facts. In *ICA*, we asked whether "the Associations have shown ALJ Holt erred in dismissing these appeals because ICA lacks standing to pursue them."[48] BLM asserts that the question the Board should have addressed was whether "the ALJ erred in declining to reconsider the August 12, 2014, Order."[49] BLM states: "The focus needed to be on the reasons proffered for requesting reconsideration, not on whether ICA established standing."[50] According to BLM, the "Board's error in characterizing the procedural posture of the issue on appeal constitutes an error regarding material facts that justifies reconsideration."[51]

BLM also argues that the Board "ignored . . . the totality of the material facts" that supported the ALJ's decision to deny reconsideration and that this further justifies granting reconsideration of our decision.[52] For example, BLM explains that multiple material facts supported the ALJ's decision to deny reconsideration, including the ALJ's previous denial of a motion for reconsideration filed by the grazing associations; the grazing associations' acknowledgment of, and failure to comply with, the extraordinary circumstances standard; the fact that the grazing associations had multiple opportunities to establish standing in the Hearings Division; and the inconsistencies in the Prescott affidavits.[53] BLM asserts that these material facts "provided an extremely strong

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[48] 190 IBLA at 109.

[49] Motion for Reconsideration at 14 (internal quotations, alteration, and citation omitted); *see* Reply at 2, 4 (stating that the "inquiry must focus not on the merits, but on whether the ALJ reasonably evaluated the arguments for reconsideration in light of the standard of review and the totality of the circumstances").

[50] Motion for Reconsideration at 14.

[51] *Id.*

[52] *Id.*

[53] *Id.* at 14-16; *see id.* at 17 (stating that the ALJ appropriately focused "on whether the Associations had good reasons to ask the ALJ to revisit a matter already twice decided, and the inconsistencies presented in the final request were certainly material to the denial of that request"), 18 (stating that the Board "essentially rejected the ALJ's credibility finding" with respect to the affidavits).

justification for the ALJ's decision," and that the Board "should have deferred to the ALJ."[54]

We find BLM's arguments to be misplaced.

As we have already noted, the ALJ did not deny the grazing associations' motion for reconsideration because they failed to meet the standard for reconsideration set forth in either 43 C.F.R. § 4.21(d) or 43 C.F.R. § 4.403. Nor did the ALJ deny the grazing associations' motion based on the surrounding circumstances and past filings as suggested by BLM. Rather, the ALJ reviewed the substance of the Prescott affidavits and determined that the grazing associations had not shown that they had standing to appeal BLM's grazing decisions to the Hearings Division.[55] In reaching his conclusion, the ALJ cited examples of inconsistencies in the three Prescott affidavits and determined that those inconsistencies made the affidavits unreliable.[56] But the ALJ did not simply deny reconsideration based on those inconsistencies; he specifically found that the grazing associations had not demonstrated standing.[57]

Therefore, the issue on appeal before the Board was whether the ALJ correctly decided that "the Cattle Associations have still not established their organizational standing to file the appeals . . . ."[58] The issue was not, as posited by BLM, whether the ALJ had correctly denied reconsideration, notwithstanding the substance of the third Prescott affidavit, because that is not the basis upon which the ALJ based his decision. We agree with BLM's statement that ALJs "have an incredibly difficult job" and "work tirelessly to give parties a fair shot."[59] But when an ALJ rules on whether a party has established standing, as the ALJ did here, that determination is properly before the Board on appeal. And in reaching our decision, the Board has authority to review the

[54] *Id.* at 18, 19 ("The Board has historically deferred to an ALJ's credibility determinations.").
[55] ALJ Sept. 2014 Order at 4; *see* 43 C.F.R. § 4.474(a) (providing an ALJ with the authority to "rule upon offers of proof and the relevancy of evidence").
[56] ALJ Sept. 2014 Order at 4.
[57] *Id.* ("I conclude that the Cattle Associations have still not established their organizational standing to file the appeals and decline to reconsider the August 12, 2014 Order.").
[58] *Id.*
[59] Motion for Reconsideration at 20.

record and make its own determination about the reliability of the underlying evidence.[60] BLM acknowledges the Board's authority in this regard[61] and has not demonstrated that the Board misinterpreted any material facts in reaching its decision. BLM simply urges that the Board "should have" deferred to the ALJ.[62]

On review, the Board determined that the grazing associations had the burden of showing error in the ALJ's decision.[63] Based on the record that was before the ALJ, including the three Prescott affidavits, we found that the ALJ had erred in dismissing ICA's appeal for lack of standing. While we upheld the ALJ's determination that Mr. Prescott, as executive director of ICA, did not demonstrate that he was qualified to attest to the membership of any of the associations other than ICA,[64] upon review of the third Prescott affidavit, we disagreed with the ALJ's reliance on inconsistencies in the affidavits to determine that all of the grazing associations lacked standing.[65] We found that because the inconsistencies in the affidavits noted by the ALJ related only to non-members rather than members of the grazing associations, they were "irrelevant to determining" if any of the associations had standing.[66] We then found that ICA had standing because, based on the information provided in the third Prescott affidavit, its member permittees were adversely affected by the BLM grazing decisions at issue. We therefore reversed the ALJ's finding to the contrary.[67]

BLM disagrees with the Board's decision but has not demonstrated that the Board misinterpreted any material facts in reaching its decision. We therefore conclude that BLM has not presented extraordinary circumstances justifying reconsideration of our decision in *ICA*.

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[60] *See United States v. Lyle I. Thompson*, 168 IBLA 64, 77 (2006)[l] ("While the Board generally accords substantial deference to the findings of an Administrative Law Judge with respect to conflicting evidence, such deference is not absolute, and the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record."); *BLM v. David Ericsson*, 88 IBLA 248, 258 n.4 (1985)[m] (finding that the Board has "full authority to reject part or all of the fact-finder's decision").

[61] Motion for Reconsideration at 19.

[62] *Id.*; *see id.* ("BLM is not asserting that the Board could not do what it did.").

[63] 190 IBLA at 104.

[64] *Id.* at 109.

[65] *Id.* at 109-10.

[66] *Id.* at 110.

[67] *Id.* at 111 ("To find that ICA cannot establish standing on the basis of harm to its members who are permittees and whose grazing privileges are adversely affected by the BLM decision on appeal would be contrary to this and other Board precedent.").

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l) GFS(MIN) 4(2006)
m) GFS(MISC) 74(1985)

CONCLUSION

Because we conclude that BLM has not met its burden to demonstrate that reconsideration is warranted, we deny its motion for reconsideration.

/s/
Amy B. Sosin
Administrative Judge

I concur:

/s/
K. Jack Haugrud
Administrative Judge